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REMARKS

Claims 1-30 remain pending.

In the Office Action, the Examiner rejected claims 1-7, 21-23, 27, 28, and 30 under 35 U.S.C. § 103(a) as being unpatentable over Earnest (U.S. Patent No. 5,982,837) in view of Kilkki (U.S. Patent No. 6,163,808); stated that claims 8-20 are allowed; and stated that claims 24-26 and 29 would be allowable if rewritten in independent form.

As an initial matter, Applicants note that specific elements in the claims have not been read on the applied references. Such elements from claim 1, for example, include "first logical event," "second logical event," "duration," "first counter," "second counter," "second duration," etc. Instead, the Office Action cites, in substance, about two and a half columns total from Earnest and about one column total from Kilkki. This does not establish, without more, a *prima facie* case of obviousness, because the alleged proof is too non-specific. Rather, it amounts to a general allegation that the claimed elements are "in there somewhere."

Worse, such block citations force Applicants to guess at what components in a given block of text the Examiner intended. Applicants respectfully remind the Examiner that under 37 C.F.R. § 104(c)(2) "the particular part [of the reference] relied on must be designated as nearly as practicable," and respectfully request that, in any subsequent actions containing art rejections, the claim elements be read upon particular components of the reference(s).

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to

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combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See M.P.E.P. § 2143.

Applicants respectfully traverse the § 103(a) rejection of claims 1-7, 21-23, 27, 28, and 30 over Earnest in view of Kilkki. Independent claims 1 and 28 require a method and system including, *inter alia*, “select[ing] a first duration from the durations, and increment[ing] a first counter for each occurrence of the first duration to provide a first total value; and increment[ing] a second counter for each occurrence of a second duration to provide a second total value, the second duration corresponding to the selected duration plus a time interval.” Independent claim 21 requires an article of manufacture including similar limitations. The combination of Earnest and Kilkki fails to teach or suggest all elements of the claimed method, article of manufacture, and system.

Applicants assume from page 2 of the Office Action that the Examiner intended to read the claimed “durations” on bit period 26 between rising edge 24 and falling edge 22 in Fig. 1 of Earnest. Applicants also note the following disclosure at col. 3, lines 44-50, of Earnest:

The value of the sample counter at the time the counter is stopped represents the time duration that RxDATA was low during exactly one bit period. The value of the sample counter is then compared with an accumulated minimum count. If the sample count is found to be less than the minimum count, then the minimum count is replaced by the value of the sample counter.

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Thus, counter 44 when stopped stores the value of a “duration,” and this value is stored to minimum count register 46 when it is lower than the current value in the register (see also col. 4, lines 61-67).

Although the claimed “first duration” might arguably be read upon the stored minimum duration in Earnest, the reference fails to teach or suggest “increment[ing] a first counter for each occurrence of the first duration to provide a first total value,” as set forth in claims 1, 21, and 28. Rather, counter 44 in Earnest is incremented to *obtain* durations, and not “for each occurrence of the first duration” as claimed. Earnest does not teach or suggest any counters other than counter 44. Also, register 46 in Earnest stores the current minimum count, and not a “total value” of a number of occurrences of a “first duration.” Earnest also does not teach or suggest any registers other than register 46.

Earnest fails to teach or suggest at least “select[ing] a first duration from the durations, and increment[ing] a first counter for each occurrence of the first duration to provide a first total value” for at least these reasons.

Nor does Kilkki teach or suggest the claimed “increment[ing] a second counter for each occurrence of a second duration to provide a second total value, the second duration corresponding to the selected duration plus a time interval.” Rather, Kilkki appears to disclose incrementing counters C1 27 and C3 31 if block 23 determines that a received cell is a real-time cell (col. 14, lines 43-50), and incrementing counters C2 29 and C3 31 if block 23 determines that a received cell is not a real-time cell (col. 15, lines 4-10). That a received cell is or is not determined to be “real time” does not reasonably correspond to an “occurrence of a second

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duration" as claimed. The type of cell (e.g., real time or not) does not necessarily denote any particular duration of the cell.

Also, assuming purely for the sake of argument that it were proper to combine the references, Kilkki fails to teach or suggest that "the second duration" corresponds to "the selected duration" (allegedly taught or suggested by Earnest) "plus a time interval" as set forth in claims 1, 21, and 28. For example, there is no teaching or suggestion that any of the counters C1, C2, or C3 disclosed in Kilkki measures the duration of another counter "plus a time interval." Kilkki fails to teach or suggest at least "increment[ing] a second counter for each occurrence of a second duration to provide a second total value, the second duration corresponding to the selected duration plus a time interval" for at least these reasons.

Because the combination of Earnest and Kilkki fails to teach or suggest all elements of claims 1, 21, and 28, a *prima facie* case of obviousness has not been established for these claims.

A *prima facie* case of obviousness also has not been established, because there is no suggestion to combine of Earnest and Kilkki as proposed. On page 3 of the Office action, only the bare conclusion that such combination "would simplify the implementation of the network management architecture and provide better quality of service to users" is advanced. No evidence from either reference or other technical reasoning has been provided to support this conclusion. Without any supporting evidence or facts, a *prima facie* case of obviousness cannot be established. See M.P.E.P. § 2142 ("The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness."). A *prima facie* case of obviousness also has not been established for claims 1, 21, and 28 for at least this additional reason.

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A *prima facie* case of obviousness also has not been established, because at least Earnest teaches away from the proposed combination. See M.P.E.P. § 2145(X)(D) ("proposed modification cannot render the prior art unsatisfactory for its intended purpose or change the principle of operation of a reference"). Earnest appears to disclose determining a single, minimum, bit period 26 using a single counter 44 and a single storage register 46 (see col. 3, lines 44-50). There is no suggestion of any deficiency or need in Earnest that would motivate one of ordinary skill to add a second counter and duration measurement scheme. Hence, at least Earnest teaches away from the proposed combination by its principle of operation of arriving at a minimum bit count by simple iteration. Such principle would necessarily be altered by the addition of other counters from Kilkki. A *prima facie* case of obviousness has not been established for claims 1, 21, and 28 for this additional reason.

Claims 2-7, 22, 23, 27, and 30 are allowable at least by virtue of their dependence from claims 1, 21, and 28.

Reconsideration and allowance of pending claims 1-30 is respectfully requested.

In the event that any outstanding matters remain in this application, Applicants request that the Examiner contact Alan Pedersen-Giles, attorney for Applicants, at the number below to discuss such matters.

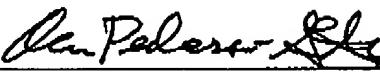
To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0221 and please credit any excess

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fees to such deposit account.

Respectfully submitted,

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